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Supreme Court, U.S.
F I L E D
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No. 96-909

In The

Supreme Court of the United States

October Term, 1996

VERA ARMSTRONG CHERRY,

Petitioner,

vs.

ROCKING HORSE RIDGE ESTATES, INC., ET AL.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeal
For The Ninth Circuit

PETITIONER'S REPLY BRIEF

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Now comes Petitioner, Vera Armstrong Cherry, with a consolidated brief to the various responding briefs filed by the various Respondents to this Petition for Certiorari, in accordance with

Rules of the Supreme Court
Rule 15
;REPLY BRIEF;

.5. Upon the filing of a Brief in Opposition, etc.

&

.6. A reply brief addressed to arguments first raised in the brief of opposition may be filed by any petitioner, etc.

The Petitioner in particular, refers to the Brief of the County of Orange, page 1, paragraph 4:

> these arguments are not a basis for granting a Petition for Writ of Certiorari,

and the Brief of Royale T.R.C., page 2, paragraph 1:

> The arguments used as a basis for granting a Petition for Writ of Certiorari (hereinafter, "Writ") are improper.

I. PROCEDURAL IRREGULARITIES

(a) We stand for the simple proposition that procedural irregularities and blatant departures from the accepted and usual course of judicial proceedings by a Lower Court or sanctioned by a Court of Appeals can authorize the Supreme Court or any Court of Last Resort, to exercise its powers of supervision. The brief of Respondent Royale T.R.C., page 6, paragraph 2 states:

> There was ample opportunity to confront and

> examine the identified witnesses and petitioner failed to conduct any discovery in this regard.

How is it possible to examine a witness when the witness, on the advice of *two attorneys* in this case, does not disclose her address or telephone number just three weeks prior to summary judgment to the opposing counsel, in violation of Federal Rules of Evidence, Rule 803(24) and Rule 804(5), which mandate that the ***address*** of the declarant is required? This is also in violation of A.B.A. Rules and the notion of fair play.

See Appendix C (App. 11), Petitioner's Petition for Writ of Certiorari, Judgment of the District Court [sic]:

> (v) As a matter of law, the evidence in Cantrell Decl. ¶ 6 alone establishes probable cause to detain Plaintiff under Cal. Welf. & Inst. Code § 5150. Whether or not Schreier's statements were true, their presentation without any contrary evidence showing their falsity at the *time of the commitment* is sufficient to establish probable cause for the hearer to believe Plaintiff was suicidal, which is a permissible basis for commitment under § 5150. The Court expresses *no* opinion as to the truth or falsity of the statements contained in Schreier Decl. ¶ 6. [Emphases added]

How is it physically possible, at the *time of the commitment*, to proffer any contrary evidence showing their falsity when the declaration itself was not finally drafted by friendly counsel until more than 12 months later?

Further, the declaration of Dr. Curtis D. Booraem, an expert published witness, Paragraph E:

> E. Although at paragraph 23 of her declaration [Exhibit D to Royale's papers], Royale T.R.C.

> Program Director Brenda Tibbets states that no medication was given to plaintiff against her will during her confinement at Royale T.R.C., this is clearly contradicted by page 113 to Royale's own Exhibit M which shows that plaintiff received an intra-muscular injection of 5 mgs of Haldol at 6:00 A.M. on 11/21/92, hardly consistent with the statement on her discharge summary which states that "She refused all meds during her stay here". [page 1 of Royale's Exhibit M].

The reputation of proffering counsel

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is thus enshrined, and hence we defer to Federal Rules of Evidence and Federal rules of *untested* hearsay.

(b) That the Lower Court violated the Federal Rules of Civil Procedure when they allowed the hearsay declaration of one Natalie Schreier in as evidence even though it was not submitted in a timely fashion to opposing counsel and that the court relied on this document without using its powers to examine the witness Schreier in the interests of justice. F.R.C.P. 37

(c) The Court did not accept as proffered evidence a deposition that was conducted in full compliance with all Federal and State rules of Civil Procedure and Evidence. Our position is that, in the interests of justice, the opposing counsel should not be given a hastily drafted declaration three weeks before summary judgment is granted, and particularly when the court can offer no opinion on the truth or falsity of the declaration upon which it relies to establish probable cause 18 months prior to the final draft of the declaration by friendly

counsel.

The deposition, when properly conducted, is a major instrument in assisting the court to efficiently administer justice. It saves time and resources, and it allows marshaling of facts, information and data, in a comprehensive manner. The penalties for not complying with the deposition can include dismissal of the action, contempt citations, and as currently, in an Illinois jail, twelve years of incarceration.

Under Federal Rules of Civil Procedure

Rule 27: Depositions Before Action or Pending Appeal

Rule 30: Depositions Upon Oral Examination

Rule 32: Use of Depositions in Court Proceedings

Rule 37: Failure to Make Disclosure or Cooperate in Discovery: Sanctions:

(3) Evasive or Incomplete Disclosure, Answer or Response

(4) Expenses and Sanctions
(b) Failure To Comply With Order

Such contemptible behavior is punishable by contempt of court. A gentleman in Illinois has been held for the last twelve years, is being held, and will continue to be held, *sine die*, until he complies with such discovery. Other penalties may include dismissal of the action against a disobedient party.

We are prepared to think that the American Court of Last Resort should have the power of supervision over flagrant procedural irregularities by a District Court and a reluctance to supervise by an Appellate Court.

Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure are not just clerical exercises. Abuses and irregularities are subject to review by the Court of Last Resort. This is in the interest of the integrity of the judiciary as well as the efficient administration of justice.

II. CONSPIRACY

We refer to the Respondent Brief of the County of Orange, page 2, paragraph 4, which states:

> Petitioner somehow ties this into a conspiratorial argument, etc.

The Law of Conspiracy:

> A civil conspiracy is a combination of two or more persons, acting in concert with each other, to commit an unlawful act, or to commit a lawful act by unlawful means, where those persons agree to inflict an injury, in any way, and where there is an overt act resulting in damage.

Here, there was an agreement, concurrence, and a combination between Lipinski, Cantrell, Blanchard, Fiore-Nordberg, the agents of Rocking Horse Ridge Association. See generally Wright v. United States C.C.A.La., 48 C.C.A. 37, 108 F. 805,809.

It is hardly relevant or necessary for all of the participants in a conspiracy to have known each other and held hands in a cloak and dagger meeting. This is established in Craig v. U.S., C.C.A.Cal., F.2d 816,822. It is therefore blissfully ignorant for these respondents to claim that because one party did not know any other party, a conspiracy could not have existed.

> The gist of a civil conspiracy is the injury or the damage, and all criminal conspiracies are embraced

within civil conspiracies.

See generally, Martha Mills v. Moseley, 50 Ga.App.536, 179 S.E. 159.

A civil conspiracy is the damage sustained.

See Dahlquist v. Mattson, 40 Idaho, 378,233 P 883, 885, and Conner v. Bryce, Sup, 170 N.Y.S. 94, 95.

Whereas

(a) Lipinski surreptitiously stays in the Petitioner's home for several hours, arranges for the entry of Cantrell, Blanchard (County of Orange), into the Petitioner's gated community, and her home. The conspirators then recommended to Fiore, Nordberg, Walker, Woolf-Willis, the agent for the principals Rocking Horse Ridge Estates Association, Inc., that the Petitioner be committed, and further violates the Petitioner's rights to privacy in her medical information,

(b) All of these parties meet in the private medical room at Western Medical Associates, and they supply 100% of the information in the files of Dr. Jose Flores-Lopez and Royale T.R.C. and they then ransacked the Petitioner's residence four hours later, without the Petitioner's permission, and steal private property,

(c) Principal Rocking Horse Ridge Estates Association, Inc., Management Service Company, and Fiore, Nordberg, Walker, Woolf-Willis, publish to each and every household scandalous and untrue information about the Petitioner and the status of the litigation in the U.S. District Court,

(d) The law firms of Fiore, Nordberg, Walker, Woolf-Willis; Hollins, Schechter & Feinstein; Freeberg,, Judy & Nettels; and Shepard, Mullin, Richter & Hampton, have placed judicial liens (based on costs from the District Court) on all of the real estate of

the Petitioner. This matter is clearly under appeal, and is the basis for a Writ of Certiorari based in part on fraud by two of the attorneys of record in the inducement of the judgment by the District Court.

If Lipinski surreptitiously invaded the Petitioner's home for several hours against her will, and if Lipinski contacted the guarded gate of the community and facilitated the entry into the Plaintiff's home of Cantrell and Blanchard, and if Blanchard and Cantrell conducted a search in violation of the Fourth Amendment, and if the Plaintiff was subsequently injured in any way, this is a conspiracy, as per King Solomon.

III. SUBSTANTIVE ERRORS

We now refer to the Responding Brief of County of Orange, page 3, paragraph 2:

> Finally, petitioner's third argument references the administration of certain drugs during petitioner's hospitalization. As there was probable cause to institutionalize the petitioner pursuant to California Welfare & Institutions Code § 5150, there can be no doubt that there was an additional **need** to treat her pursuant to that institutionalization. [Emphasis added]

We also refer to the Responding Brief of Royale T.R.C., page 4, paragraph 3:

> Petitioner's third and fourth arguments arise out of allegations pertaining to the administration of medication during petitioner's hospitalization. Probable cause to hospitalize the petitioner pursuant to *California Welfare & Institutions Code* §5150 will clearly give rise to the corresponding appropriate **need** to treat such a patient during the

hospitalization. [Emphasis added]

Even though the records show that the Petitioner had not seen any of the four eye-witnesses for at least 100 days prior to November of 1992, and even though Frank Armstrong had been married, and had not resided in the Petitioner's home for eight years (during which time the Petitioner did play Bob Dylan's music), and even if Certified State Contractors had replaced the broken metal in the front door and the pipe to the refrigerator that, although plastic-coated, was actually copper bore, and even if all of these parties in their respective depositions affirm that the Petitioner had never made suicidal statements to them, and had always been self-reliant, and even if all of these parties had never asked the Petitioner whether she had ever made suicidal statements to Natalie Schreier, or anyone else, we assume ***ARGUENDO*** that the Petitioner was taken to Dr. Jose Flores-Lopez for evaluation.

We now refer to the Florida State Statutes.

IV. FLORIDA STATUTES RE INVOLUNTARY DETENTIONS & EVALUATION

§§394.467(1)(2) mandate that before a person can be involuntarily detained by the county the patient has a right to:

(1) notice
(2) a judicial hearing
(3) appointed counsel
(4) access to medical records and personnel, and
(5) an independent expert examination

These are automatic rights that are triggered when there is an attempt at an involuntary placement in Florida. These are some of the standards enunciated in Vitek v. Jones, 445 U.S. 480 (1980).

The reference in the Responding Brief of Royale T.R.C. on page 4 to Vitek v. Jones is not well taken. Further, we refer to the safeguards enunciated in Washington v. Harper, 494 U.S. 599

(1990). See Petitioner's Writ of Certiorari, page 20, and in particular:

> b. The Committee who determines that the Inmate should be medicated can **not** include treating or diagnosing physicians and personnel, [Emphasis added].
>
> c. The Inmate has certain procedural rights before, during and after the hearing,

We find from the deposition of Dr. Jose Flores-Lopez, that everyone brought in involuntarily to the County for a §5150 evaluation is offered voluntarily the anti-psychotic drug Haldol, and told of its side effects.

If a person refuses the drug Haldol, then that person is immediately, involuntarily administered the standard benchmark drug by the County anyway.

V. LACK OF INFORMED CONSENT

Ze Barth v. Swedish Hospital Center 81 Wash.2d 12, P.2d 1.8 clearly indicate that informed consent is a balancing of the probable risks vs. the probable benefits. In any event, Consent not freely given or voluntarily given in the face of colorably lawful coercion, is not informed consent. In Florida, any person under involuntary evaluation *may* not render informed consent.

VI. DEPRIVATION OF CUSTODY

Thus every person, while in five-point restraints in the County of Orange, who consented to Herr Doktor Jose Flores-Lopez administering the standard benchmark anti-psychotic drug Haldol did not give informed consent.

CONCLUSION

The Petitioner was released under a Writ of Habeas Corpus Granted. We now review the following cases:
U.S. ex rel. Wirtz v. Sheehan, D.C. Wis., 319 F.Supp.
People v. RICO, 97 C.A. 3d 124, 158 Cal.Rptr. 573,576
Fasuco v. Arafeh, 173 Conn. 473, 378 A.3d 553
State v. Lenihan, 151 Conn. 552, 200 A.2d 476,478
U.S. v. Tod, 263 U.S. 149, 44 S.Ct. 54, 57, 68 L.Ed. 221
People ex rel. Luciano v. Murphy, 160 Misc. 573, 290 N.Y.S. 1011
Sheriff Clark County v. Hatch 100 Nev 664, 691 P.2d 449,450
Fay v. Noia, 372 U.S. 391, 83 S.Ct. 882, 9 L.Ed.2d. 837.

It is established that a person **is in custody** if he is under the jurisdiction of a traffic cop, on bail, on probation, on remand, in a line-up, under house arrest, or wearing a monitoring bracelet, and is subject to release under a Writ of Habeas Corpus.

Thus a person under California Statute § 5150 is deprived of his liberty, **is in custody**, and is subject to both a Writ of Habeas Corpus and the Due Process safeguards enunciated in Washington v. Harper, 494 U.S. 599 (1990).

We urge the Court to rule that Harper governs any person held involuntarily under a State § 5150 Statute in the United States. This is a Liberty Interest and a Fundamental Right.

Adams V. Wainright. D.C.Fla., 512 F.Supp. 948, 953.
Price v. Cohen, C.A. Pa., 715 F.2d 87, 93

DATED: January 16, 1997 Respectfully Submitted:

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